

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into between the State of Arizona, by and through the Arizona Department of Health Services, ("Plaintiff") and Metro Sports Bar and Restaurant, Incorporated, an Arizona corporation, dba Metro Sportz Bar; Ed and Al, Inc., an Arizona corporation, dba Boomerang Bar and Billiards and dba River City Pockets; Maverick Saloon, Inc., an Arizona corporation, dba Maverick Saloon; Alfonso A. Larriva; and Alfonso Ruiz (collectively "Defendants").

RECITALS

1. Plaintiff filed a lawsuit against Defendants on May 14, 2007, Maricopa County No. CV 2007-008303, seeking issuance of a Preliminary and Permanent Injunction, and an award of Civil Penalties against Defendants. In that lawsuit, the Plaintiff alleged that Defendants violated the Smoke-Free Arizona Act ("the Act") set forth in A.R.S. §36-601.01, *et seq.* The Defendants disputed that their businesses were "enclosed areas" so as to be subject to the Act.
2. After an evidentiary hearing, Plaintiff obtained the entry of a Preliminary Injunction against Defendants on June 29, 2007. A copy of the Order for Preliminary Injunction is attached hereto and incorporated herein by reference.
3. The parties have participated in a Pretrial Conference with Judge Pendleton Gaines and have a mandatory Settlement Conference set before Judge Pro Tem Lori Horn on January 10, 2008.
4. The parties have determined that it is in their best interests to avoid the uncertainty and costs of further litigation by resolving the disputes between them. The parties have agreed to a full and complete settlement of all claims arising out of that lawsuit, except as hereafter identified. The settlement is embodied in the terms of this Agreement, the Stipulation for Entry of an Order for Permanent Injunction and an Award of Civil Penalties against Defendants, and the Final Order for Permanent Injunction and Award of Civil Penalties ("Final Order").

AGREEMENT

NOW THEREFORE, in consideration of the foregoing, and the terms, covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

A. Recitals. The Recitals set forth above are true, accurate, and not subject to dispute, and are incorporated herein by reference.

B. Settlement. Defendants agree to the issuance of a Permanent Injunction enjoining them and their officers, agents, servants, and employees from violating the Smoke-Free Arizona Act. Defendants have reviewed and approve the form



of the Permanent Injunction included within the Final Order to be submitted to the Court for signature. Defendants further agree that the Final Order shall include an award of Civil Penalties against Defendants, jointly and severally, in the sum of \$10,000.00.

C. Payment of Civil Penalties. Defendants will pay to Plaintiff, by cashier's check made payable to the State/Arizona Department of Health Services, the sum of TEN THOUSAND DOLLARS (\$10,000), as and for payment of Civil Penalties. This payment may be made at any time, but shall be made no later than five business days after the date of the Court's entry of the Final Order. In the event Defendants fail to make this payment as required herein, the parties agree that said sum will begin to accrue interest at the rate of 10% per annum; further, the Defendants agree that the unpaid amount becomes a debt owed to the State. In the event a lawsuit or other legal action is taken to collect this debt, Defendants waive any defenses to non-payment and agree to pay for all costs and attorneys fees of collection.

D. Release. The parties agree that, subject to Plaintiff's receipt of the payment described in Paragraph C, and any action taken to enforce the Court's entry of a Permanent Injunction against Defendants, each party hereto forever releases the other party from any and all claims, arising out of or pertaining in any way to the lawsuit or the facts and circumstances described in this Agreement.

E. Stipulation. The parties to this Agreement acknowledge that, simultaneous with the execution of this Agreement, they have entered into a Stipulation for Entry of an Order for Permanent Injunction and an Award of Civil Penalties against Defendants. The parties agree that Plaintiff will file the Stipulation with the Court and further agree to cooperate in the entry of the referenced Final Order against Defendants. This agreement to cooperate means that, in the event the Court requests changes to the language of the Final Order, both parties will act in good faith to facilitate the entry of an appropriate Final Order to effectuate the intent of the parties.

F. Retention of Jurisdiction. The parties agree that the Court can maintain jurisdiction of this case to enforce the Permanent Injunction.

G. Approvals. This Agreement is the result of arms-length negotiations. Each party to this Agreement represents and warrants that the persons executing this Agreement on behalf of each party are fully authorized to sign this Agreement and that no further approvals are required to be obtained from any persons or entities.

H. No Interpretation Against Drafters of Agreement. No provision or principle of law or equity that holds the terms and conditions of a written document shall be interpreted against the party who drafted the Agreement shall have any application to this Agreement.

I. Cooperation. The parties shall execute and deliver any document that is reasonably necessary to achieve the goals or purposes of this Agreement.

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J. Amendments. This Agreement may be modified only in writing.

K. Waiver. A waiver of any requirement contained in this Agreement shall not be deemed to be a waiver of any other provision.

L. Arizona Law. This Agreement shall be governed, construed and enforced by the laws of the State of Arizona.

M. Severability. If any provision of this Agreement shall be held to be unenforceable, then the remainder of the Agreement is severable and shall remain enforceable.

N. Costs of Litigation. Each party shall bear their own costs of litigation that arose out of the lawsuit and the drafting or negotiation of a settlement of this matter.

O. Counterparts. This Agreement may be executed in counterparts, all of which shall constitute a part of the same Agreement.

N. Effective Date. The effective date of this Agreement shall be the date of the last signature.

Plaintiff

By: Kenna Ray

Date: 1-8-08

Defendants

By: [Signature]

Date: 12/29/07

(JAC)